

March 29, 2010

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

PAMELA ANN KRIEL,

Plaintiff - Appellant,

v.

KEITH JUDKINS, Individually; DAN
A. ERWIN, Individually; CINDY
KIRBY, Individually and as Clerk of
the District Court of the Twenty-Third
Judicial District within and for
Lincoln County Oklahoma; PAUL M.
VASSAR,

Defendants - Appellees.

No. 10-6041
(D.C. No. 5:10-CV-00068-D)
(W.D. Okla.)

ORDER

Before **TACHA, MURPHY**, and **HARTZ**, Circuit Judges.

This court lacks jurisdiction over this appeal.

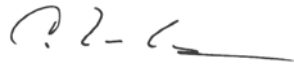
The appellant, Ms. Kriel, is appealing from the district court's order remanding a case to state court, based on lack of subject matter jurisdiction. Remands that are based upon lack of subject matter jurisdiction or a defect in the removal procedure are not appealable. *See* 28 U.S.C. § 1447 (d); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996). *See also* *Powerex Corp v. Reliant*

Energy Services, Inc., 551 U.S. 224, 234 (2007) (“We hold that when, as here, the District Court relied upon a ground that is colorably characterized as subject-matter jurisdiction, appellate review is barred by § 1447 (d).”) The exceptions found in 28 U.S.C. § 1443 are inapplicable here. Under § 1443 (1), the rights protected must arise under federal laws which specifically protect civil rights and are cast in terms of racial equality. *Miller v. Lambeth*, 443 F. 3d 757, 761-62 (10th Cir. 2006). The exception provided by § 1443 (2) is also inapplicable because Ms. Kriel does not allege that “[s]he has been a federal officer or agent, [or] that [s]he has been acting with or for one.” *Miller* at 761.

APPEAL DISMISSED.

Entered for the Court,
ELISABETH SHUMAKER, Clerk of Court

by:



Christine Van Coney
Counsel to the Clerk